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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 SECURITIES AND EXCHANGE
5 COMMISSION,

6 Plaintiff,

7 v.

11 CV 9645 (RJS)

8 ELEK STRAUB, ANDRAS BALOGH,
9 and TAMAS MORVAI,

10 Defendants.

11 -----x

12 New York, N.Y.
13 March 20, 2015
14 10:30 a.m.

15 Before:

16 HON. RICHARD J. SULLIVAN,

17 District Judge

18 APPEARANCES

19 SECURITIES AND EXCHANGE COMMISSION

20 Attorneys for Plaintiff SEC

21 ROBERT DODGE

22 THOMAS BEDNAR

23 JOHN WORLAND

24 HOGAN LOVELLS (US), LLP

25 Attorneys for Defendant Straub

ROBERT BUEHLER

LISA FRIED

PILLSBURY WINTHROP SHAW PITTMAN, LLP

Attorneys for Defendant Balogh

THOMAS HILL

WILLIAM SULLIVAN

KRISTEN BAKER

GREENBERG TRAURIG, LLP

Attorneys for Defendant Morvai

MICHAEL LOUIS KOENIG

VICTORIA LANE

F3kgstrc

(Case called)

MR. DODGE: Robert Dodge. Good morning.

MR. BEDNAR: Tom Bednar and Jack Worland, your Honor.

THE COURT: Good morning.

For the defendants, I guess we'll go my left to right.

MR. BUEHLER: Robert Buehler and Lisa Fried for
Mr. Straub.

THE COURT: Good morning.

MR. SULLIVAN: Good morning, your Honor. William
Sullivan, Tom Hill and Kristen Baker on behalf of Mr. Balogh.

THE COURT: Mr. Sullivan, Mr. Hill and Ms. Baker.

MR. KOENIG: Michael Koenig and Victoria Lane on
behalf of Tamas Movai. Good morning.

THE COURT: Good morning to you, Ms. Lane.

MS. LANE: Thank you.

THE COURT: Thanks for coming. I always feel guilty
dragging people up from D.C. For those who make the trip, you
are always free to ask if you want to appear telephonically or
through the miracle of video teleconference. That's always an
option. Keep that in mind.

We have got a couple of issues that have been tee'd
up. I got letters from the parties back in February involving
discovery disputes that I have resolved but also involving some
other disputes that we're going to talk about today.

In no particular order, but I think this is the order

F3kgstrc

1 we should go, we have the plaintiff's contemplated motion for
2 summary judgment on a variety of grounds; we have the
3 defendants' motion to exclude the testimony of Slobodan
4 Bogoevski on a couple of grounds; and then we have the
5 plaintiff's motion to amend the complaint.

6 Let's start with the motion for summary judgment.
7 This isn't a typical motion that you're contemplating here,
8 Mr. Dodge, right? It seems to me like it's a preemptive
9 summary judgment designed to neutralize what might be a summary
10 judgment motion you're contemplating from the defense.

11 MR. DODGE: It's a motion for partial summary
12 judgment.

13 THE COURT: But a partial summary judgment on
14 particular elements of causes of action and on jurisdiction,
15 right?

16 MR. DODGE: That's correct, to eliminate defenses with
17 respect to, for example, statute of limitations. But we
18 believe that given the Court's analysis of the law and the
19 facts that have been developed during discovery, that it's
20 proper at this time for the Court to rule as a matter of law on
21 personal jurisdiction, on the statute of limitations and on the
22 use of interstate commerce.

23 THE COURT: Let me ask the defendants. Are you
24 contemplating motions for summary judgment, any of you?

25 MR. SULLIVAN: William Sullivan on behalf of

F3kgstrc

1 Mr. Balogh. Yes, we are, your Honor.

2 THE COURT: We haven't gotten there yet because I
3 think the deadline for premotion letters -- I have to take a
4 look at the schedule I set -- but I think it's usually after
5 discovery is all wrapped up.

6 MR. SULLIVAN: That's correct.

7 THE COURT: You were contemplating waiting until after
8 expert discovery is done?

9 MR. SULLIVAN: Yes. We have about ten expert
10 depositions. I think as we outlined in our premotion
11 conference letter or our case management status letter, to be
12 more precise, we have expert depositions going through the late
13 spring through the summer. And I think we anticipate filing
14 motions in the late summer, early fall.

15 THE COURT: I'm not going to hold you to this, but
16 you're contemplating a motion as to the inverse of the motions
17 that Mr. Dodge is thinking about?

18 MR. SULLIVAN: I don't think we'll move on statute of
19 limitations, but I think that we probably will be doing the
20 obverse of what Mr. Dodge contemplates.

21 THE COURT: For jurisdiction?

22 MR. SULLIVAN: Jurisdiction, absolutely, and for the
23 interstate commerce.

24 THE COURT: Okay. For you, of course, that would mean
25 you win. If Mr. Dodge wins on that, then he's got one less

F3kgstrc

1 element to worry about, I suppose. If you win on any of those,
2 then that basically eliminates an entire claim or all claims,
3 right?

4 MR. SULLIVAN: That would be our hope.

5 THE COURT: I think that's probably the more logical
6 way to do this, is to tee it up that way. If it were only the
7 plaintiff's contemplated motions, I would say that's almost
8 really more what I would handle as part of a motion *in limine*
9 after a joint pretrial order where I ask the parties to specify
10 whether there's jurisdiction. And if there's a dispute, I
11 would resolve that. Then I would probably look to see if there
12 are other undisputed facts that could be resolved before it
13 went to the jury, I think.

14 But if the defendants are moving for summary judgment
15 on claims, then obviously you can make a countermotion for
16 summary judgment, and I think that would be tee'd up pretty
17 clean.

18 Mr. Buehler.

19 MR. BUEHLER: Thank you, your Honor. Robert Buehler
20 for Mr. Straub. Your Honor, I just wanted to indicate that I
21 think for purposes of the defendants' summary judgment motions,
22 both Mr. Straub and Mr. Morvai would also be moving
23 affirmatively on statute of limitations grounds because we have
24 a factual basis for that as well. This kind of begins bleeding
25 into the next issue that I think your Honor would be taking up:

F3kgstrc

1 The defendants would also contemplate even more sweeping
2 summary judgment claims were we to succeed in precluding the
3 testimony of Mr. Bogoevski.

4 THE COURT: We'll get to that in a minute. I can't
5 tell somebody they can't make a motion, and I wouldn't, but I
6 certainly can control the timing.

7 Mr. Dodge, I think we ought to hold off on these until
8 I have all of my summary judgment motions in a row and then
9 I'll figure out what we've got.

10 MR. DODGE: Yes, sir. It was not our intention to
11 file a summary judgment motion now; it's simply that the
12 Court's scheduling order did require premotion letters on
13 summary judgment by last month, but our expectation is
14 consistent with the defense.

15 THE COURT: Did I then amend the scheduling order
16 since then?

17 MR. DODGE: I think it was amended after we submitted
18 our claim.

19 THE COURT: That may be it.

20 MR. DODGE: In any case, we thought we complied with
21 the Court's deadline, but our expectation is we complete expert
22 discovery first, and then all the parties would file
23 cross-motions for summary judgment. That was always our
24 expectation.

25 THE COURT: I think we can put that on ice for now and

F3kgstrc

1 we'll have this conversation, I'm sure, again later given what
2 you have told me. And I don't think I even need to hear from
3 anyone else about contemplated summary judgment motions because
4 there's no point. Things may change based on the expert
5 discovery.

6 Let's now talk then about the motion to exclude the
7 testimony of Mr. Bogoevski. This is the defendants' motion. I
8 don't know who is carrying the ball on this one. I read the
9 letters on this. There are two principal objections: One is
10 the fact that the witness adopted statements made previously in
11 a proceeding at which the defendants were not present; also,
12 there's the suggestion, somewhat general at this point, that
13 this is hearsay or a large proportion of his testimony was
14 hearsay. I'm not sure if people really want to brief this
15 further or if we have enough here and you want me to just deem
16 the motion made and resolve it.

17 MR. BUEHLER: Your Honor, if you were going to grant
18 the defendants' motion, we would be happy to rely on the
19 letters, but we do think it is a very significant motion. I
20 will tell you, we struggled to get in as much as we possibly
21 could into the letter that we did.

22 Mr. Bogoevski, we agree with the SEC, he's a crucial
23 witness. He's crucial for them for a different reason than for
24 us. We feel he is an eleventh-hour witness who is, frankly,
25 not a credible one who is testifying almost exclusively based

F3kgstrc

1 on information that he received from others.

2 THE COURT: He's a coconspirator. He's at least
3 presented as a coconspirator, right?

4 MR. BUEHLER: That's correct. That's how he's
5 presented by the SEC. We would take great issue with that. I
6 don't even think he characterizes himself as a coconspirator if
7 you look at his testimony carefully. But because of the space
8 limitations, we were general as to the hearsay, but we are
9 doing essentially a line-by-line question-by-question analysis.
10 We do not believe there is virtually any admissible testimony
11 that is available.

12 We also want to make it clear, your Honor, that while
13 we focused on the adoption issue, the adoption issue is really
14 just the tip of the iceberg. What happened here, your Honor,
15 is, in this proceeding, during the course of fact discovery
16 when we were constantly dealing with the SEC on arranging and
17 taking all sorts of depositions all over the world on notice
18 properly done, the SEC found this individual; and without
19 giving us notice, contrary to what Rule 30(b)(1) requires, that
20 we must be given written notice, they went off on their own and
21 conducted a videotaped interview with an eye towards using that
22 at trial, using that as admissible evidence; and then
23 afterwards deciding that they were going to use that as their
24 direct examination in the course of a deposition, thereby
25 undercutting, eviscerating the notice requirements of Rule 30,

F3kgstrc

1 we'd also say Rule 30(c)(1), which requires examination and
2 cross-examination to proceed as they would at trial, which
3 would not be the case because we weren't present. We weren't
4 available to essentially examine and object.

5 THE COURT: Well, I'm not there yet, right? I don't
6 know how they're planning to use the testimony of
7 Mr. Bogoevski. Maybe he'll show up for all I know. That's
8 really a motion *in limine*, isn't it?

9 MR. BUEHLER: Yes. I would say, your Honor, a few
10 issues. I do not think he's going to show up. He is currently
11 in jail. He has well over a year to serve in jail. It's not
12 at all clear when he will get out of jail.

13 THE COURT: It's not at all clear when we're going to
14 have a trial in this case.

15 MR. BUEHLER: And whether or not he's going to be able
16 to travel. And he's made extensive comments on the record and
17 I believe also to the SEC indicating that he refuses to leave
18 Macedonia.

19 THE COURT: But there are ways to have testimony, even
20 if he doesn't leave Macedonia, right? I have this great gadget
21 here that will allow us to have testimony by video. I just did
22 it in a criminal trial last month.

23 MR. BUEHLER: I would note that wouldn't solve the
24 issues here because the evidentiary issues - we wouldn't be
25 wasting your Honor's time - are still going to have to be

F3kgstrc

1 resolved before he testifies. And since we would like to make
2 dispositive summary judgment motions on all of the claims and
3 we do feel that Mr. Bogoevski's testimony is really the only
4 possible way that the SEC could dispute the issues that we
5 would be seeking summary judgment on, we do think those issues
6 should be resolved before the summary judgment process.

7 THE COURT: But those issues are the hearsay issues,
8 right?

9 MR. BUEHLER: That is correct, your Honor.

10 THE COURT: Because the adoption issue, what we have
11 called broadly the adoption issue, seem to me to turn on how
12 his testimony is introduced at trial, right?

13 MR. BUEHLER: Your Honor, that's true, but Rule 56
14 does talk in terms of the admissibility of evidence.

15 THE COURT: Right.

16 MR. BUEHLER: And we would say that as it's presently
17 constituted, that evidence is not admissible, not only for the
18 evidentiary reasons, but for the procedural reasons. It is not
19 testimony that is consistent with trial. It could not be used.

20 THE COURT: If he testifies live, then there's no
21 issue, right?

22 MR. BUEHLER: Your Honor, that could be the case, your
23 Honor, but at that point, you would have already made the
24 evidentiary rulings and it would be clear that his videotapes
25 wouldn't be useable. If he shows up, we can deal with that

F3kgstrc

1 issue. I think it's highly unlikely, if your Honor reviews the
2 record, that he will ever agree to testify, but if he did, that
3 would be dealt with at another time.

4 We'd also argue, your Honor, that even then, we would
5 have been deprived of our right to depose him in a proper
6 fashion consistent with Rule 30, and we would object to his
7 even appearing, even if he did walk in the door.

8 THE COURT: You did depose him, right?

9 MR. BUEHLER: I would say depose in the most loosest
10 of terms possible.

11 THE COURT: How many hours did you have with the
12 witness?

13 MR. BUEHLER: I would say, your Honor, we were in the
14 same videoconference with him a total of somewhat less than six
15 hours over the course of three different sessions, which were
16 repeatedly afflicted with not only technological issues,
17 translation issues, disputes over the translation, the witness
18 refused to answer a number of questions that we put to him,
19 which we think right there is a basis to strike his testimony.
20 He withheld documents that he clearly possessed that he
21 wouldn't turn over. And he abruptly ended the deposition when
22 he still clearly had testimony to provide. He basically
23 dictated the terms of how, when, where and on what subjects he
24 would be questioned.

25 So, were we able to pose some questions to him? Yes.

F3kgstrc

1 Did it constitute a proper deposition or proper
2 cross-examination? We think it was far from that.

3 THE COURT: It sounds like you want to brief this
4 further.

5 Mr. Dodge, I'll give you a chance to respond to what
6 Mr. Buehler just said, but I think it's likely we're going to
7 have to delve into this in a little more detail. The pre-motion
8 letters are designed to help tee up an issue. They're not
9 designed to replace a brief. Sometimes, frankly, they can
10 because there's not much more to say on a subject, especially
11 if it's a legal one, but this I think may not be one of those
12 easily resolved ones.

13 Go ahead.

14 MR. DODGE: Procedurally, we agree that this issue
15 should be briefed by the parties. It's an important issue for
16 both sides, and it should be briefed fully before the Court
17 rules.

18 With respect to the statement that the witness gave on
19 December 28, we're not aware of anything in the federal rules
20 that would prohibit the SEC from interviewing a potential
21 witness.

22 THE COURT: Clearly there's nothing wrong with you
23 interviewing a potential witness. It's a closer call as to
24 whether the interview, which is then taped and under oath, can
25 be introduced at trial as his testimony.

F3kgstrc

Are you planning to do that?

MR. DODGE: Our expectation, your Honor, is that yes, we will; that he made a statement that was subsequently adopted during his deposition.

THE COURT: I get that, but it's a little cute, right? It's a little cute that you could have a deposition at which they can object and they can say things like, whoops, wait a minute, wait a minute, not a good question. They didn't get to do that here.

MR. DODGE: I don't think it's cute at all, your Honor.

THE COURT: Let me just finish. It's also the case that normally you'd interview a witness, you'd notice that this is a guy you're going to rely on at trial, and then you'd give them a chance to depose. And you're not going to spend any time at a deposition doing your debrief, right, normally? If it were a normal witness?

MR. DODGE: I'm not sure I follow the question.

THE COURT: I'm just saying I think this is the point I'm trying to make in your favor. This is a situation where you're not obliged to sort of run through your direct examination in a deposition, right? If you've met with a witness, you know what he's going to say, you're comfortable this is a good witness for you, then you're going to notice him to the other side and the other side then gets to take a crack

F3kgstrc

1 at it. And they effectively do cross-examination in probing,
2 broad cross-examination, but you're not necessarily going to be
3 asking a ton of questions at that deposition, right?

4 MR. DODGE: Exactly. That assumes, of course, that
5 the witness will be available for trial. And in this case, our
6 expectation was that we have no confidence that he will be.

7 THE COURT: Why can't we get him here on this screen?

8 MR. DODGE: Well, he'll be in prison.

9 THE COURT: So? We take him out for a day.

10 MR. DODGE: That may or may not be allowed by the
11 authorities.

12 THE COURT: It happens all the time. I would imagine
13 it just requires a request - you probably ought to get on it
14 now - you say we want him, we could set a trial date. And then
15 we can go through the proper channels to get him lined up so he
16 can testify under oath here in this courtroom, or we have a
17 Rule 15 deposition type situation.

18 MR. DODGE: We can make that request and we are
19 certainly prepared to do that. I cannot have an enormous
20 amount of confidence that it will be granted. We don't have
21 any control over the authorities in Macedonia. The level of
22 cooperation we have received over there has not been high from
23 the government.

24 THE COURT: In the videotaped meeting that you had
25 with him, the interview, who posed the questions to the

F3kgstrc

1 witness?

2 MR. DODGE: I did.

3 THE COURT: You did? Okay. So you were allowed to do
4 that?

5 MR. DODGE: Yes. I was allowed to fly into the
6 country and meet with the witness; yes.

7 THE COURT: So, is there any reason to think that you
8 wouldn't be allowed to do that again, this time with defense
9 counsel and do the whole thing there with us watching on a
10 screen?

11 MR. DODGE: I simply have no personal knowledge about
12 what procedures would be involved in trying to do that with an
13 individual who is in custody.

14 THE COURT: Was he in custody at the time you
15 interviewed him?

16 MR. DODGE: He was not. He had been ordered to begin
17 serving his prison sentence at that time on December 29, and I
18 met him on December 28.

19 THE COURT: Frankly, I think it is quite doable. I
20 don't know about Macedonia.

21 MR. DODGE: I hope it is doable, and if it is doable,
22 we'll certainly do it. I just don't know if it is.

23 THE COURT: Let's talk about the hearsay issues,
24 though, because those are the ones that would still be issues
25 to be discussed before he gave live testimony to the jury.

F3kgstrc

1 MR. DODGE: There are several aspects to his testimony
2 that really not hearsay at all. The witness testified from
3 personal knowledge with respect to, for example, his handling
4 of key documents relating to the bribe scheme that he had in
5 his possession, his authentication of those documents, and his
6 delivery of those documents to us.

7 He also discussed or testified about his role in the
8 bribe scheme, his role in terms of giving legal advice on
9 documents, his involvement in managing the delivery of money.
10 And there are things that he was personally involved in, for
11 example --

12 THE COURT: Are you suggesting he's a coconspirator?

13 MR. DODGE: Yes, we are.

14 THE COURT: You are.

15 MR. DODGE: Part of his testimony is based on his
16 direct knowledge. Part of his testimony is based on statements
17 that other coconspirators made to him.

18 THE COURT: In the course of the conspiracy?

19 MR. DODGE: In the course of the conspiracy, yes,
20 during the conspiracy and part of it.

21 THE COURT: So, that's the whole ballgame, right?
22 Mr. Buehler disagrees with that characterization, and I guess
23 that's what we're going to see. The devil's in the details. I
24 have to see the statements and assess based on what he said in
25 the deposition.

F3kgstrc

1 MR. DODGE: Yes.

2 THE COURT: Do you agree?

3 MR. DODGE: Yes. Exactly. Those issues need to be
4 resolved. Our suggestion is, when it comes to specific
5 questions, particularly about second-level hearsay and a
6 statement made by a coconspirator in furtherance of the
7 conspiracy, I think it probably makes sense to give us a chance
8 to designate what testimony we intend to use before going
9 through every single line of all of his testimony.

10 THE COURT: What do you propose for the purposes of
11 this motion? You would do that?

12 MR. DODGE: For the purposes of this motion, I don't
13 think it makes sense for us to designate his testimony now
14 because we haven't completed discovery yet. What I think does
15 make sense --

16 THE COURT: Well, fact discovery is completed, right?

17 MR. DODGE: Right, but our expectation is that we
18 would be designating testimony to use at trial when we get to
19 the pretrial stage of the case.

20 THE COURT: That's my point. Typically, a motion to
21 preclude certain evidence is usually what comes up as a motion
22 *in limine*. That's when I get it. They want to use these
23 deposition designations. They can't. That's clearly hearsay.
24 That's an objectionable question or answer and I shouldn't
25 allow it. That's typically what happens.

F3kgstrc

1 Here, you're asking me to do it because it's relevant
2 to your motion and I guess the defense's motion ultimately for
3 summary judgment as to whether certain evidence is admissible.
4 And if it is admissible, then maybe I decide that summary
5 judgment motion one way and if it's not admissible, maybe it
6 goes the other way. Right?

7 MR. DODGE: We're not asking the Court to decide this
8 issue now. We do view it as a motion *in limine* and something
9 that could properly be dealt with later, but to the extent that
10 the defendants seek to file essentially a motion to strike the
11 witness' testimony in its entirety, that would be at least ripe
12 for adjudication, and we're certainly prepared to take that on.
13 So, for example, if the defense wants to move that his entire
14 testimony ought to be stricken because six hours of
15 cross-examination wasn't enough for them, then we're prepared
16 to address that and brief it.

17 If, for example, they want to file a motion that says
18 we should not be allowed to adopt his prior statement because
19 maybe somewhere out there, there's a law that says you can't
20 have a witness adopt a prior statement, then we're prepared to
21 take that on, too. But we don't think it makes sense to go
22 through line-by-line of the transcript and say if the SEC
23 designates this, then it's a hearsay problem, there's no
24 foundation, whatever. I don't think that makes sense. That's
25 properly a motion *in limine* subject.

F3kgstrc

1 THE COURT: I think this is helpful.

2 Mr. Buehler, it sounds like you're planning to do a
3 line by line.

4 MR. BUEHLER: That's correct. Under Rule 56, parties
5 can only rely on evidence that's admissible. So, whether or
6 not we do this at trial, whether or not we do this on summary
7 judgment, they have to have admissible testimony. If they're
8 not going to rely on Mr. Bogoevski's testimony in response to
9 our summary judgment motion, that would be one thing, but we
10 don't understand that to be the case.

11 THE COURT: Your motion is to strike his testimony as
12 a whole.

13 MR. BUEHLER: I would say that's certainly the
14 ultimate goal, your Honor. We think we have ample grounds to
15 do that, but we're doing it with a really specific purpose in
16 mind, and that is so we can seek summary judgment because we
17 think we're entitled to it.

18 THE COURT: Right. Then you're having me do summary
19 judgment twice, right? Normally, what would happen in summary
20 judgment is you are each going to make your motion, submit your
21 briefs, talk about what are undisputed facts or disputed facts,
22 you're going to rely on things like deposition testimony. And
23 then in responding to the other side, you're going to say, hey,
24 that's not admissible evidence because it's hearsay or because
25 of something else, and then I would resolve that as part of the

F3kgstrc

1 motion for summary judgment.

2 You're asking me to do all of that in advance as part
3 of a motion to strike, and then if you don't win on the motion
4 to strike, I'll do it again on a motion for summary judgment?

5 MR. BUEHLER: No, your Honor. I think we view it as,
6 and this I think is a great way to lay it out, we do not plan
7 on doing it again for summary judgment. We do not think,
8 though, that given the breadth of the issues here, and there
9 are significant ones, that we should do that in the course of a
10 summary judgment motion. I don't want to speak for the Court,
11 but I don't think it's going to be a particularly good way to
12 tee it up for the Court. It is certainly not what we think
13 would be the most sufficient way to deal with the issue.

14 We would be making a summary judgment motion and
15 within it would be a rather massive motion to strike the
16 testimony of this witness; we think we should do that first.
17 If we do that first, it will make summary judgment considerably
18 more clearer. If your Honor says it's in, then summary
19 judgment is really simplified. If your Honor says it's out, we
20 think summary judgment will be similarly simplified and there
21 will not be any evidentiary issues that your Honor will have to
22 deal with as part of summary judgment.

23 THE COURT: Again, I don't know why it would be so
24 massive. I think it will just turn on whether broad categories
25 of statements by the witness are admissible evidence for

F3kgstrc

1 purposes of trial; and if they're not, then they won't be
2 considered and summary judgment will be effected.

3 MR. BUEHLER: I think the admissibility issue is not
4 just based on the rules of evidence. We think it does go to
5 the very nature of whether or not Mr. Dodge is able to
6 essentially conduct the deposition in violation of Rule 30.

7 THE COURT: I'm sorry to interrupt you, but it seems
8 to me that the motion that we ought to be focused on now is
9 whether or not procedurally you got what you need that
10 justifies the deposition being available and useable on a
11 motion for summary judgment.

12 Broad arguments like this adoption was improper under
13 the law or broad arguments like his leaving without permission,
14 his basically refusing to answer questions, those things
15 effectively prevented you from being able to depose him. Those
16 are the kinds of arguments that I would generally consider on a
17 motion to strike the entire deposition.

18 The fine-tuned review of every statement, that seems
19 to me to be something I'm not inclined to do now because I
20 don't even know which of these statements are going to be
21 relevant for the summary judgment motion, and I don't want to
22 get into that now. I can only imagine how long this motion
23 will be if I'm doing that. So why don't we do it in two
24 pieces: Broad argument that the entire deposition should be
25 struck because of the irregularities or the improper methods by

F3kgstrc

1 which it was conducted, which means either I strike it or I
2 give you another opportunity to depose him, perhaps. That's an
3 alternative resolution. I think that's the way I'm inclined to
4 do this. And then if I don't strike it, then you can make
5 arguments about which particular parts of it that they're
6 relying on or would need to rely on for their causes of action
7 are inadmissible. That's I think part of summary judgment.

8 MR. BUEHLER: I think that's absolutely acceptable to
9 the defense. We would like the opportunity to do that.

10 THE COURT: That's fair. So, then we will set a
11 briefing schedule for that. We have also got a motion to
12 amend, but I think that really is part and parcel with this
13 motion to strike the deposition.

14 Do you agree with that, Mr. Dodge?

15 MR. DODGE: I'm not sure it's part and parcel.

16 THE COURT: Let me interrupt you. I'm sorry. That's
17 the great thing about being a judge. I get to interrupt people
18 all the time, but I don't mean to be rude. I just mean I want
19 to be more clear about what I'm asking.

20 It seems to me that you are looking to extend the
21 period of the conduct here from March or May to January of
22 2005, right?

23 MR. DODGE: Yes.

24 THE COURT: And that's based exclusively on
25 Mr. Bogoevski's testimony?

F3kgstrc

1 MR. DODGE: Principally, not exclusively, but
2 principally his testimony.

3 THE COURT: Now, if I strike, if I were to grant the
4 defense's motion to strike his testimony, his deposition is
5 out, can't rely on it, there's other bases that would support
6 the changes that you're proposing for your amendment?

7 MR. DODGE: We would have a circumstantial argument
8 that the bribe scheme began at an earlier point. The state of
9 the evidence when we filed the complaint established that the
10 negotiations between the company and the government took place
11 between late December 2004 and into the middle of 2005. The
12 clearest evidence of actual bribery would have supported a
13 statement that bribes were made beginning in May of 2005. We
14 believe they were made earlier, but we didn't have hard
15 evidence of that. You can make a circumstantial case that they
16 were made earlier, but Mr. Bogoevski testifies that, no, the
17 bribes were first explicitly offered in January of 2005.

18 THE COURT: Are there any other amendments that you're
19 contemplating?

20 MR. DODGE: No. It's very, very narrow. It's simply
21 that.

22 THE COURT: I guess we can do this two ways: We can
23 decide that motion at the same time that we decide the motion
24 to strike or we can just let you amend. Usually the standard
25 is pretty low for that. And then if I end up striking, you'll

F3kgstrc

1 have a heck of a tough time proving the conduct that took place
2 before March or May of 2006 or '05? I'm trying to remember.
3 2006?

4 MR. DODGE: 2005.

5 THE COURT: 2005.

6 MR. DODGE: I guess my suggestion would be that you
7 simply let us amend, but I know the defense has objected to
8 that.

9 THE COURT: I want to hear what they have to say, but
10 I don't see what the big deal is. I don't know how they're
11 prejudiced by this. If it turns out that the evidence you are
12 seeking to rely on to prove that to the fact finder is out,
13 you're probably going to wish you hadn't amended.

14 MR. DODGE: Well, it may be that we make allegations
15 that we're unable to prove at the end of the day.

16 THE COURT: Right.

17 MR. DODGE: We don't expect that, but that could
18 happen. But the real question on whether or not we should be
19 allowed to amend the complaint, which should focus on prejudice
20 to the defense and whether there is any additional discovery
21 that would be required, we can't conceivably see any additional
22 discovery that would be made necessary by an amended complaint.

23 THE COURT: Who is covering this? Mr. Sullivan,
24 you're on this one?

25 MR. SULLIVAN: Thank you, your Honor. As the SEC has

F3kgstrc

1 effectively conceded, an amended complaint would uniquely rely
2 on the representations of Mr. Bogoevski.

3 THE COURT: I'm not sure he did concede that. I think
4 he suggested that there was other evidence that would support
5 an inference of an earlier start date but that Bogoevski is
6 sort of the direct evidence.

7 MR. SULLIVAN: Right, and without the direct evidence,
8 no inference would lie. We think it makes much more sense, as
9 you have articulated, since you're going to be looking at a
10 broad-based motion with regard to the admissibility of all of
11 the evidence of Mr. Bogoevski, based both on both procedural
12 and evidentiary grounds, whereupon you'll have an opportunity
13 to review the statements of Mr. Bogoevski -- and, quite
14 frankly, from the defense side, he doesn't say anything
15 remotely resembling what Mr. Dodge has articulated in terms of
16 the proffering of bribes as early May of 2005. We simply don't
17 read his evidence that way.

18 THE COURT: Can I interrupt you. It seems to me the
19 standard for a motion to amend is not the standard for a motion
20 for a summary judgment.

21 MR. SULLIVAN: That's correct.

22 THE COURT: On a motion for summary judgment, they'd
23 have to have admissible evidence. On a motion to amend, they
24 just have to have basically a good-faith basis to change,
25 right?

F3kgstrc

1 MR. SULLIVAN: Absolutely right, and that leads me to
2 the second point, which is, as you noted earlier, that you may
3 strike this, so it may not be in play at all; and, therefore,
4 there wouldn't be anything to rely upon substantively or
5 inferentially; and, third, prejudice would accrue to the
6 defense.

7 THE COURT: What prejudice?

8 MR. SULLIVAN: Again, another public pronouncement of
9 an illegal act through the outlining of it yet again in a
10 complaint, the potential to do extra discovery and to draw --

11 THE COURT: What extra discovery is going to be needed
12 based on this amendment, March 2005 back to January 2005?

13 MR. SULLIVAN: Since this evidence just developed in
14 December/January, December 2014/January 2015, we were not on
15 notice and had no opportunity to track any parallel avenues of
16 information relating to our ability to challenge the
17 suggestions that the bribes or potential bribes, alleged bribes
18 may have occurred as early as May 2005. We'll have to go and
19 do that now.

20 It will accrue to the detriment, as I said,
21 reputationally to the defendants, and it will simply encourage
22 and necessitate more work on our part. It seems premature in
23 light of all of those considerations, particularly when we have
24 a well-framed and the meritorious motion to strike that will be
25 before you as you determine in accordance with your briefing

F3kgstrc

1 schedule, it may eliminate this person's purported evidence
2 entirely rendering this early exercise unnecessary and
3 uneconomical frankly.

4 THE COURT: If I rule against you and the defendants
5 on the motion to strike, then you have no objection to them
6 amending? In other words, you think they're tethered, that
7 they're joined at the hip.

8 MR. SULLIVAN: I don't want to commit right here. I'd
9 like to review the amended complaint again, but I would not
10 suggest that we would have any significant, substantive
11 objections to the extent that you allow that evidence in.

12 THE COURT: Okay.

13 MR. SULLIVAN: But, again, we'll review it before we
14 make a final determination. There may be other grounds that
15 I'm not contemplating here that we may have in reserve, but I
16 do believe it is substantially tied, as the SEC has conceded,
17 to Mr. Bogoevski. The inference is, and I think we can all
18 agree, that the direct evidence relies on the admissibility of
19 what Mr. Bogoevski purports to offer.

20 THE COURT: Mr. Dodge, are you prejudiced by waiting
21 until I resolve the motion to strike as to when you amend? I
22 assume it doesn't matter to you, right?

23 MR. DODGE: It doesn't matter to us really so much
24 when the complaint is amended. I would make two observations,
25 your Honor. The first is that even if a motion to strike were

F3kgstrc

1 granted, as the Court has already pointed out, Mr. Bogoevski is
2 potentially available as a live witness at trial. And his
3 availability as a live witness at trial, even if that's
4 uncertain, gives us a basis to amend the complaint regardless
5 of how the Court rules on a motion to strike.

6 THE COURT: I don't know. If I'm striking his
7 deposition testimony finding, in essence, that he wasn't
8 available to be deposed, do you think you'd nonetheless just
9 get to call him at trial?

10 MR. DODGE: We would certainly ask the Court for leave
11 to do that.

12 THE COURT: There might be a basis to do that. I'm
13 not sure that that's something I'm resolving now on this
14 contemplated motion or really that's a motion *in limine* down
15 the road.

16 MR. DODGE: I guess it depends, your Honor. For
17 example, if the effect of the Court's ruling were that
18 Mr. Bogoevski was simply never to appear in the case one way or
19 the other, then, of course, that would undermine the basis for
20 our motion to amend to a large extent. But what happens on a
21 motion to strike, that could be resolved in any number of
22 different ways it seems to me.

23 THE COURT: I think your point is that if I resolve
24 the motion to strike in your favor, then there's no question
25 that you're going to get to amend. If I resolve it against

F3kgstrc

1 you, there's still a chance that you'd have a basis to amend.

2 MR. DODGE: That's exactly right.

3 THE COURT: Okay.

4 MR. DODGE: The second point finally with respect to
5 prejudice to us and what the SEC's motivation is seeking to
6 amend the complaint in the first instance, one of the causes of
7 action in the case involves lying to auditors and that cause of
8 action is subject to Rule 9 of the federal rules. And because
9 it involves allegations of fraud, we have to plead that with
10 particularity. So, it's necessary for us to identify each of
11 the statements that we allege are fraudulent. And for that
12 reason, we believe it's necessary, at least sometime between
13 now and trial, to have the complaint encompass all of the
14 statements that we contend to be fraudulent.

15 THE COURT: Let me ask Mr. Sullivan and Mr. Buehler,
16 or anybody who wants to answer, wouldn't it in some ways make
17 more sense to have the complaint amended? Then you know what
18 you're shooting at, and then you can assess the motion to
19 strike and the testimony that you think is clearly hearsay
20 through a finer prism.

21 MR. BUEHLER: Yes, your Honor. As currently laid out,
22 the motion to amend is not particularly major. It's a handful
23 of dates here and there changed. It's much less than what we
24 understood previously from a prior iteration that the SEC was
25 looking to amend. At this point, the upshot, while I'm not

F3kgstrc

1 standing up here conceding or consenting to anything, I'm
2 willing to admit it's not a massive change to what we would be
3 facing. We really do think the motion to strike is the key
4 issue here and that's certainly what we're going to be focusing
5 on.

6 THE COURT: Mr. Sullivan.

7 MR. SULLIVAN: For Mr. Balogh's part, we think it's an
8 unnecessary step. The issues will be very well framed and
9 refined. After the Court's evidentiary ruling with regard to
10 Mr. Bogoevski, if the Court deems that that information is
11 going to be relevant and have a bearing on the matter at trial
12 for purposes of evidentiary production, then the SEC can amend
13 in conformity with the Court's ruling. Right now, that is a
14 contested issue. Right now, the amendment as stated is
15 accurate in connection with discovery that has been adduced in
16 this case. We would have an extra step to deal with if the
17 Court rules against the admission of Mr. Bogoevski's testimony
18 and the amendment will therefore be written in terms that
19 suggest the evidence produced by Mr. Bogoevski that would be
20 admissible and used at trial and we would have to reverse that
21 step. It's an extra step.

22 THE COURT: I don't know that we would have to reverse
23 that step. Again, a motion to amend is not applying the same
24 standard as a motion for summary judgment. A motion to amend,
25 they just have to have basically a good-faith basis to change

F3kgstrc

1 it. And then they have to demonstrate it wasn't done in bad
2 faith, it's not a dilatory motive, no undue prejudice to the
3 defendants or futility, but futility of the amendment means
4 that it basically can't pass the 12(b)(6) standard, so there's
5 no point in allowing an amendment because it still fails to
6 meet 12(b)(6). On its face, there wouldn't be sufficient facts
7 alleged that could support the cause of action, but that's not
8 what we're talking about here.

9 You're suggesting that if I keep out Bogoevski's
10 testimony, then they don't have any basis or any way to prove
11 this at trial, but I don't think that's part of the standard on
12 a motion to amend. I don't think I get into, well, how are you
13 going to prove this at trial. I think I'm really focused on
14 whether they're acting in bad faith or by whether you are going
15 to be unduly prejudiced. And I don't see any of those at this
16 point. And since the standard is that these things should be
17 granted, I'm inclined to allow it, though, maybe, frankly,
18 Mr. Dodge, you may want to wait to see whether or not you win
19 on the motion to strike because you may not want to have a
20 complaint that lays out claims you can't support and lays out
21 facts you can't support.

22 MR. DODGE: We really don't see any legitimate basis
23 for the motion to strike. We'll brief that more fully, but we
24 really don't see that as being a well-founded motion. And we
25 certainly do intend to move to amend the complaint.

F3kgstrc

1 MR. SULLIVAN: My final point, and then I'll defer
2 with the Court's indulgence to Mr. Koenig, my final point is at
3 this stage, I think the prejudice occurring to the defendants
4 outweighs and overwhelms --

5 THE COURT: What's the prejudice? That there's going
6 to be another document that sort of sullies the reputation? Is
7 that what you mean?

8 MR. SULLIVAN: That's part of it.

9 THE COURT: But I don't think that's ever part of the
10 analysis for purposes of a motion to amend.

11 MR. SULLIVAN: The additional effort and consumption
12 of time for purposes of developing the tributary issues related
13 to the evidence that this individual seeks to offer here as
14 Mr. Dodge suggested the inferences, the details back in time
15 from May 2005, even potentially before that time into
16 January 2005. There will be additional discovery required.

17 THE COURT: That's an argument of undue prejudice, it
18 seems to me, which hasn't been developed. Mr. Buehler seemed
19 to be suggesting that it wasn't going to be prejudicial. What
20 is the prejudice? What would you need to do? Assuming the
21 date goes back to January, what do you need to do that you
22 didn't do before that you couldn't have known you needed to do
23 before because you thought it was March instead of January?

24 MR. SULLIVAN: It was after May instead of January,
25 and now it's linked back to May when we thought it was

F3kgstrc

1 substantially later in the year, and now the inference is it
2 may even go back as early as January. Those are two additional
3 timing steps that we're going to have to pursue and investigate
4 that was not part of this case before purely on what we
5 consider to be unsubstantiated hearsay evidence of this
6 gentleman produced in a way that's procedurally deficient.

7 THE COURT: But they're allowed to. They're allowed
8 to amend the complaint before there's even been a deposition.
9 They don't have to meet an evidentiary burden or a procedural
10 burden before they are allowed to rely on evidence for purposes
11 of an amended complaint.

12 MR. SULLIVAN: Based on a good-faith understanding,
13 yes. I'm not sure they have that here. I'll defer to
14 Mr. Koenig.

15 THE COURT: Yes. He looks like he has good stuff.

16 MR. KOENIG: The only point I want to make on
17 prejudice as to the questions you were just asking Mr. Sullivan
18 is, we conducted over 20 depositions in this case with an
19 expectation of what the time frames were. We didn't ask any
20 question to any of the people who were the auditors about any
21 of the times the SEC now wants to add in. So we have been
22 precluded from knowing that we should have asked questions
23 about this now-seemingly relevant time frame, which wasn't in
24 the complaint. That's the prejudice. The key people who might
25 have been able to answer questions about the relevant time

F3kgstrc

1 period -- unless we want to redepose 20 people again and go
2 back, that is what the prejudice is.

3 THE COURT: That would be the kind of prejudice that a
4 motion to amend is focused on.

5 MR. KOENIG: Precisely.

6 THE COURT: Everybody was very slow to get to that.
7 It seemed a minute ago, nobody was too worried about that, but
8 if that's a real concern, let's brief that as well. I want one
9 brief on the two motions and a section with respect to the
10 prejudice that will be felt by the defendants as a result of
11 this amendment. It's two months, right? March 2005 to
12 January 2005; is that right? I don't have them in front of me.

13 MR. DODGE: I think the original complaint does use
14 the March date at one point. But your Honor, with respect to
15 the prejudice issue, the parties have known from our original
16 complaint, from the very beginning of this case, that the
17 factual narrative encompasses a period of time from
18 December 2004 up until the middle of 2006, and all of the
19 discovery taken has covered that entire period of time.
20 Everybody knew that the negotiations between the government and
21 the company were taking place from December of 2004 until the
22 middle of 2005, so that time period has always been on the
23 table. There are no surprises.

24 The only difference is that toward the end of the
25 discovery period, a new fact came to the light, it came to

F3kgstrc

1 light to all parties, which was that the first discussion of
2 explicit bribery took place earlier than any of the parties
3 earlier knew. It happens in discovery. You learn facts all
4 the way through.

5 THE COURT: I get it. Let me cut you off. You folks
6 can brief this. I can't imagine I'm not going to let them
7 amend if I deny the motion to strike. I just can't imagine
8 that the standard is, as I said, very different than a summary
9 judgment standard and it's very difficult for me to imagine
10 that there's going to be the kind of prejudice here that would
11 preclude an amendment of this modest a nature. But I'm not
12 going to rule today. I'll give you a chance to flesh out these
13 arguments, but I wouldn't bet the house on it if you're a
14 betting man.

15 I think that's what I wanted to cover. Are there
16 other issues that we need to address? Expert discovery is just
17 bumping along, right?

18 MR. DODGE: It is. I think we have some scheduling
19 issues with respect to summary judgment briefing that the
20 parties are not in sync on. And I think there are also some
21 outstanding paper discovery issues that we wanted to bring to
22 the Court's discussion. Mr. Bednar is going to handle those
23 issues for us, but there are some paper discovery issues.

24 THE COURT: I thought I had resolved the discovery
25 issues. What are the paper discovery issues that I'm missing?

F3kgstrc

1 MR. BEDNAR: They are relatively discrete and
2 hopefully they'll take care of themselves. We're hoping to get
3 an update today. We have two aspects of discovery requests
4 that have been outstanding since August with respect to
5 defendants Balogh and Straub. They regard minutes of
6 interviews that both defendants had with the Hungarian National
7 Police regarding events central to this case.

8 We have received an update from defendant Straub that
9 earlier this month he has submitted a written request now to
10 the Hungarian National Police, so we're hoping that issue will
11 be resolved with respect to him. We don't know where we stand
12 with respect to defendant Balogh, so we're hopeful his counsel
13 could update the Court today. Again, we're hoping to avoid
14 having to involve the Court in resolving those issues.

15 THE COURT: You and me both.

16 MR. BEDNAR: But they have been open since August, so
17 we're hoping to get an update on where we stand.

18 THE COURT: That's right with respect to Straub?

19 MR. BUEHLER: Yes, your Honor. We have made a
20 request. I do want to just note for the record we had
21 previously made a written request to the central prosecution
22 authority in Budapest. They indicated they were unable to
23 locate those records. We also made an oral request to the NBI,
24 the National Bureau of Investigation in Hungary. They also
25 were unable to respond with any specificity as to where these

F3kgstrc

1 minutes were. So we have followed up with a written request,
2 but I did want to let you know it wasn't just earlier this
3 month that we first tackled this issue. We have been dealing
4 with it for a while.

5 THE COURT: So you get an "A." very good, Mr. Buehler.
6 Mr. Sullivan, how are you doing?

7 MR. SULLIVAN: Very well. Happy to address this
8 issue.

9 THE COURT: Let's see if you're going to get an "A."

10 MR. SULLIVAN: First of all, we're entertaining to
11 comply with the discovery requests made by the SEC to produce
12 materials to enhance third parties even though we don't believe
13 the federal rules of discovery mandate it.

14 THE COURT: Right. I think we have covered all of
15 that, right?

16 MR. SULLIVAN: Nevertheless, we have undertaken to
17 reach out to both the Hungarian National Police as well as the
18 Hungarian Financial Supervisory Authority.

19 THE COURT: In writing?

20 MR. SULLIVAN: In writing.

21 THE COURT: When was that?

22 MR. SULLIVAN: Within the past month. I don't have
23 the specific date. The problem is we have been hamstrung by
24 information provided to us by the SEC itself. The contact
25 individuals at these agencies are either no longer there or

F3kgstrc

1 have had our mail returned to us for no apparent reason.

2 Moreover, in the final roadblock we were evaluating,
3 your Honor, and we don't believe we really have the obligation
4 to pursue this, the Hungarian Financial Supervisory Authority
5 has advised us that for purposes of addressing our written
6 request, we need to proceed through local counsel by way of a
7 power of attorney. This is going to require my client to
8 engage the services of a local Hungarian lawyer for the
9 purposes of executing a power of attorney to be submitted to
10 the Hungarian Financial Authority.

11 Our position is that we're reevaluating this, but I'm
12 also inclined to suggest that it may be well beyond the
13 obligation of an individual defendant in a civil enforcement
14 action to pursue a foreign national agency for purposes of
15 engaging local counsel to comply with specific rules and
16 requirements of that agency which require legal work, in this
17 case, the power of attorney.

18 I think at some point, our efforts have been
19 worthwhile, meritorious, well intentioned, but I think they
20 must cease at a certain level, and I think we have reached that
21 point.

22 THE COURT: Mr. Buehler, did you have to do a power of
23 attorney thing?

24 MR. BUEHLER: Mr. Straub happened to have local
25 counsel in Hungary, so he was able to handle that on

F3kgstrc

1 Mr. Straub's behalf.

2 THE COURT: And if the SEC were to cover the cost of
3 local counsel, would that solve the problem?

4 MR. SULLIVAN: I think that would be very helpful.
5 We'd welcome that solution.

6 MR. BEDNAR: In addition, we have proposed, and we're
7 still willing, if defendant Balogh would prefer to execute a
8 very limited power of attorney, we have a local counsel who can
9 take care of submitting the request if that power of attorney
10 is executed if the defendant would rather not go through the
11 expense of engaging local counsel.

12 THE COURT: I have to believe that a local Hungarian
13 attorney for the purposes of this has got to be a lot cheaper
14 than Mr. Sullivan. So, I think it probably behooves everybody
15 to get this done with a minimal amount of back and forth and
16 briefing and getting the Court involved, seems to me. And I
17 say that with admiration, Mr. Sullivan, you have no idea how
18 much.

19 MR. SULLIVAN: As long as that's on the record, and I
20 believe it is, I'm very pleased.

21 We still have to work through the issue of actually
22 who to direct our well-intentioned correspondence to with
23 regard to the Hungarian National Police. And we have not had
24 any helpful suggestions on the part of the SEC, but we're happy
25 to work with them.

F3kgstrc

1 THE COURT: I can't help you. I don't know anybody
2 over there. Colombia would be a different story, so that's one
3 issue. What else?

4 MR. BEDNAR: Your Honor, we had intended to discuss
5 scheduling issues with the Court because of very different
6 summary judgment schedules that we proposed. I think that's
7 been overtaken by how the Court has proposed to handle the
8 different briefing issues here, so we'll defer to the Court on
9 scheduling for those. Of course our preference is to begin and
10 complete the briefing in an expeditious manner.

11 THE COURT: For summary judgment?

12 MR. BEDNAR: For summary judgment, as well as for any
13 motion to strike --

14 THE COURT: We're going to set a schedule now for the
15 motion to strike, right? Summary judgment, I think we're going
16 to wait until the end of discovery. That's what I would be
17 inclined to do now.

18 The motion to strike, how long do we need to brief
19 that, Mr. Buehler?

20 MR. BUEHLER: First, I just wanted to make sure
21 that we were on the same page as the Court. My understanding
22 of the motion to strike would just be to deal with the various
23 procedural issues that we raised that go to the legitimacy or
24 integrity of the process that we'd use and we will save the
25 evidentiary issues for summary judgment depending on how your

F3kgstrc

1 Honor rules on the motion to strike.

2 THE COURT: Yes, because otherwise we would be
3 spending a lot of time on facts and statements they're not
4 planning to rely on, and it's just irrelevant.

5 MR. BUEHLER: No. Understood. I just wanted to make
6 sure we were on the same page.

7 THE COURT: We're on the same page, you and I.

8 MR. BUEHLER: Your Honor, I think in our letter that
9 we had submitted to the Court assumed your Honor would
10 entertain this, and you will and we really appreciate that, we
11 suggested April 3, which is two weeks from today for us to
12 submit our motion.

13 THE COURT: That's fine with me. April 3. And how
14 long for --

15 MR. BUEHLER: If your Honor would indulge, since we
16 submitted that, my schedule had changed a little bit.

17 THE COURT: If I had said it like this, ah, April 3,
18 all right, I guess, then you would just shut up?

19 MR. BUEHLER: I was always taught to try to read the
20 Court, your Honor. If we can get a little more time, it would
21 be appreciated.

22 THE COURT: What day do you want?

23 MR. BUEHLER: If we can have one week more.

24 THE COURT: April 10. That's my birthday, so I'm
25 bound to be in a good mood that day.

F3kgstrc

1 MR. BUEHLER: That would be our gift to you, your
2 Honor.

3 THE COURT: Always thinking of me. Thanks,
4 Mr. Buehler.

5 What sort of birthday gift would you like to give me,
6 Mr. Dodge?

7 MR. DODGE: I think the schedule that the defense
8 initially proposed, the increments of time seem fine with us.
9 They proposed May 11 as an opposition date, but if we extend
10 that by a week as well to May 18, that would be fine with us.

11 THE COURT: I don't envision this being a terribly
12 complex and lengthy motion at this point, but I'll give you
13 that time if you want it, but I would think everybody wants to
14 get this puppy going.

15 MR. DODGE: We'll stick with May 11 for our
16 oppositions, and then June 1 for the reply.

17 THE COURT: Generally, I give a week for the reply.
18 Are you guys planning to travel in the month of May? I'm
19 talking to the defendants.

20 Mr. Buehler, May 11, are you going to have this
21 response? How long do you need for a reply?

22 MR. BUEHLER: A week is fine.

23 THE COURT: I'll give you two weeks. Let's do it
24 before Labor Day, okay?

25 MR. BUEHLER: Great.

F3kgstrc

1 THE COURT: May 25.

2 MR. BUEHLER: Perfect.

3 THE COURT: I will issue an order or a minute entry
4 that lays out these dates, just if there's any question, okay?

5 Is there anything else we need to cover today?

6 MR. DODGE: Yes.

7 THE COURT: The answer I was looking for was "no."

8 MR. DODGE: I apologize, your Honor. The briefing on
9 the motion to amend, am I to assume that would follow the same
10 schedule?

11 THE COURT: This is going to be a consolidated
12 briefing with respect to the two motions.

13 MR. DODGE: Both issues at the same time?

14 THE COURT: I think that's right. We can make this as
15 formal as we want, but I just don't think there's any point in
16 having crossing motions. You can file your motion to amend
17 tomorrow if you want, but let's just have their opposition and
18 then your reply as it were.

19 MR. DODGE: One set of briefs that deal with both
20 issues. That's our preference, too.

21 THE COURT: It is fully on the tail of the motion to
22 strike. I really don't think the motion to amend is going
23 anyplace. I'm going to grant the motion to amend for sure if I
24 deny the motion to strike. I'm likely to grant the motion to
25 amend even if I grant the motion to strike. I can't imagine

F3kgstrc

1 that the prejudice is going to be such here that it causes me
2 to say no, you can't amend. But I'm going to give defense
3 counsel an opportunity to brief this with respect to prejudice.
4 I think that's the only issue that's up for grabs. I don't
5 think there's bad faith. I don't think it's being done for
6 purposes of delay. Futility is not the issue. I think
7 prejudice is the only issue, and I'll let them develop it, but
8 you just need to respond to that. I don't want a separate set
9 of briefs on that.

10 MR. DODGE: Thank you.

11 THE COURT: It's always good to see you. It's always
12 a pleasure to have good lawyers who know what they're doing. I
13 mean that sincerely. Thank you for your time.

14 Let me thank the court reporter also. If anyone needs
15 a copy of the transcript, let me ask you to take that up with
16 her later through the website, just because I have another
17 matter I want to start.

18 Thanks. Have a nice day. Get out of here before the
19 snow. Happy spring.

20 (Adjourned)